IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5104 of 1990

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHRI K. K. ATARA
Versus
BAGASARA NAGAR PALIKA AND ANOTHER

Appearance:
1. Special Civil Application No. 5104 of 1990
MR AJ SHASTRI for Petitioner No. 1
RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 26/08/2004

ORAL JUDGEMENT

1. By this Writ Petition, the petitioner has questioned the refusal of benefit to the petitioner to draw the salary in the grades of Rs.550-900 wef 01-02-1972 to 31-12-1985 and Rs.1640-2900 from 01-01-1986 onwards, mainly, on the ground that the respondent-authority has committed serious illegality in rejecting his rightful claim, even though the petitioner, being a Commerce Graduate with the subject of Advanced

Accounting and Auditing, had not passed the necessary examination, for drawing the salary of a qualified Accountant.

2. The petitioner was serving as an Accountant in the office of respondent No.1, Bagasra Nagar Panchayat, since 01-02-1972. Since October 1986, the said Bagasra Nagar Panchayat came to be converted into Bagasra Nagar Palika. The petitioner is a Graduate in Commerce faculty. It is, therefore, his case that he is a qualified Accountant. In support of this contention, he has pleaded that the expression "qualified" has not been defined by the Finance Department of respondent No.2. The petitioner was undertaken in the service on a grade of Rs.425-800 and he continued to draw the same grade till 31-12-1985.

3. Later wef 01-01-1986, the petitioner started getting the grade of Rs.1400-2600. The petitioner, as such, had also applied for appearing and passing the necessary examination of the Department, which is known as "Gujarat Accounts Clerks (Lower Standard) Examination". He paid the fees for the examination by a challan, a copy, whereof, is produced on record in this Writ Petition. It also bears the endorsement of having received the challan with the application form. The petitioner was replied by the Secretary of the Bagasra Nagar Panchayat to the effect that the papers which were sent for examination had been received back and, therefore, the same were returned to the petitioner. This was sent with a letter dated 05-07-1976, a copy whereof is, also, placed on the record of this Writ Petition.

4. The main contention, advanced in this petition, on behalf of the petitioner, is that since he is a Commerce Graduate with the subject of Advanced Accounting and Auditing, he is not required to pass the necessary examination for drawing the salary of a "qualified Accountant". The salary of a qualified Accountant in the respondent-authority was in the grade of Rs.550-900 from 01-12-1972 to 31-12-1985. The salary for the qualified Accountant was revised from 01-01-1986 and prescribed in the grade of Rs.1640-2900. Despite this, the petitioner could not be given the said grade by respondent No.1 in view of the repeated demands made by the petitioner. It is, also, noticed from the record that the Finance Department of respondent No.2, State of Gujarat, had issued a notification, dated 01-06-1987, declaring the pay-scale of various Government as well as other employees and at that time, at Sr. No. 40, in the said

notification, pay-scale of the Accountant, either qualified or unqualified, is mentioned. So far as the qualified Accountant is concerned, the pay-scale prescribed is Rs.1640-2900 while for unqualified Accountant, pay-scale prescribed has been Rs.1400-2600.

5. It is the contention of the petitioner that before 01-01-1986, the pay-scale of a qualified Accountant was fixed, at Rs.550-900 and another grade for qualified Accountant has been fixed in the grade of Rs.500-900. Insofar as the unqualified Accountant was concerned, at the relevant time, the grade prescribed was Rs.425-800. Basing his support on this aspect, the petitioner is a qualified Accountant. He has not been given the grade of Rs.1640-2900 and the grade of Rs.550-900, from 01-01-1986 onwards and from 01-02-1972 to 31-12-1985, respectively.

6. He has placed reliance on Resolution dated 10-06-1987 issued by the Panchayat and Rural Housing Department of respondent No.2, State of Gujarat with regard to pay revision of various non-Gazetted posts in the District and Taluka cadres of the Panchayat services. It is further pleaded that the petitioner has been entitled to pay-scale from 01-01-1986. It is, in this context, on 20-01-1990, again, the petitioner had applied to the President of the respondent No.1 authority, stating that he should be given pay-scale of the qualified Accountant and no other qualified Accountant is serving under the office of respondent No.1. In this connection, the nature of duties of both, the qualified as well as non-qualified accountants, are alleged to be identical. Respondent No.1 issued an Order dated 01-07-1989 by which the duties of the employees of respondent No.1 has been distributed and defined. A copy of the said order has, already, been placed on the record in this Writ Petition. Respondent No.1 has not replied nor it has implemented its own order, dated 01-07-1989, and the Resolution, dated 10-06-1987, issued by respondent No.2.

7. The reliance, on a Notification of Finance Department of the State of Gujarat, dated 01-06-1987, does not, in any way, take the case of the petitioner insofar as the issue in focus is concerned. Entry No.14 in the said resolution, which is placed at Annexure-E to this petition, also, does not clearly manifest that for qualifying for the said salary, an employee, at Departmental Examination, is exempted.

8. After having taken into consideration the plea

advanced, the prayer sought in this petition, for the entitlement to draw the salary in the grade of Rs.550-900 from 01-02-1972 to 31-12-1985 and then Rs.1640-2900 from 01-01-1986 onwards, cannot be subscribed to in absence of any sanction of any order, circular, resolution, rule or any material on the record of this petition and, therefore, the petition needs to be rejected.

8. Before parting, as a matter of last resort, Mr.Shastri, learned Advocate for the petitioner, emphatically and orally, placed reliance on three decisions in similar cases, wherein, according to him, the discretion could be exercised to exempt appearance from the Departmental Examination qua the qualified B.Com.Graduate. This cannot be probed further in this petition in absence of any material on record in that behalf. However, he has submitted that the petitioner would like to approach the competent authority, having discretion to exempt qualified Commerce Graduate from appearance in the Departmental Examination for the post of Accountant. Needless to say, the issue is not in focus here and it is for the petitioner to avail such an opportunity and try his luck, if he so desires, and it will be for the competent authority to exercise discretion, in the event of such application being made before such authority. Obviously, it is for the concerned competent authority to take decision in accordance with the procedure and the provisions, and on the basis of the merits of the case and, also, in accordance with law.

9. Consequently, the petition shall stand rejected. Rule discharged. No order as to costs.

(J. N. BHATT, J.)

/shamnath